IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.232 OF 2005

Esmile Mehatab Jamadar ... Applicant

versus

State of Maharashtra & ors. ... Respondents

...

Mrs.Smita R. Kadu Gavai, for the Applicant.

Mr.B.H. Mehta, for the Respondents.

...

CORAM : A.M.KHANWILKAR,J.

22nd February 2005

P.C.:

. Heard Counsel for the parties. The competent authority has rejected the Petitioner's application for release on furlough leave essentially on the ground that he is not entitled for the said relief as, in the past, he had overstayed for a period of 1732 days while released on parole leave and was taken into custody after arrest. To get over this ground,

learned Counsel for the Petitioner has pressed into service decision of our High Court in the case of Santosh Bhagwandin Bachharaj v. Superintendent, Central Prison, Amravati, reported in 2003(4) Mh.L.J. 349, to contend that even in the present case, the Petitioner has been punished for the overstayed period by imposing penalty under the Prison Rules and that cannot be the basis for denying furlough leave to the Petitioner.

2. The learned A.P.P., on the other hand, contends that the opinion recorded in the reported decision is not the correct statement of law. He submits that the penalty imposed for overstaying parole leave and refusal to grant furlough leave at a later point of time cannot come within the realm of double jeopardy, which is the foundation for proceeding to decide the case in the reported decision.

3. It is not necessary for me to examine the wider question raised by the learned A.P.P. Suffice it to observe that the reported decision cannot be pressed into service in the fact

situation of the present case inasmuch as in the present case, the Petitioner had overstayed parole leave for a period of 1732 days. He did not surrender himself, but was arrested. Whereas, in the reported decision, the petitioner therein had overstayed only for a period of 105 days and had himself surrendered on every occasion before the jail authorities. In the present case, the authorities were justified in rejecting the furlough leave with reference to rule 4(10) of the Prison Rules.

4. Accordingly, no fault can be found with the impugned decision of the competent authority in the fact situation of the present case. Hence, rejected.

(A.M.KHANWILKAR,J.)